



## PROCUREMENT NEWS AND NOTES

**Thank You!** A special thanks to the agencies for your help in getting projects to us as complete and timely as possible during the year-end period. Since the beginning of the year, our office has been short staffed since Devin Garrity, one of our Contracts Officers, was activated for military service. Thanks to Devin's telecommuting with our office and the Herculean efforts of his faithful Contracts Assistant, Rhonda Grandy, they have managed to keep projects moving. Hopefully, we'll be fully staffed again soon, but in the meantime, thanks for your patience!

**Changes in Law Concerning Public Notice.** The 2003 Legislature passed House Bill 94, which revised the public participation and notice requirements for open meetings. The Governor's Office is spearheading an effort to understand and interpret the effect this bill has on state government in general. As for its effect on public procurement, the SPB will inform agencies as to any required changes in procedures once guidance has been received from the Governor's Office.

**Independent Contractor Issue.** The Montana Supreme Court issued an opinion in April of this year, *Wild v. Fregein Construction and Montana State Compensation Insurance Fund*, 2003 MT 115, that the Montana Department of Labor and Industry (MDLI) says "has implications for Montana's independent contractors and those who hire them." The thrust of the opinion is that even if a contractor has an independent contractor exemption on file with MDLI, if that contractor is told when and how to do the work, provided equipment and materials, provided training, and subject to being fired, these are all indications that the worker is an employee rather than an

independent contractor. Therefore, agencies are strongly cautioned to consider these elements when determining whether a contractor is indeed an "independent contractor" or is being treated more like an employee. If a court determines the relationship is more akin to that of an employer-employee, the agency will be responsible for ensuring protection of the contractor if injured under the provisions of the Workers' Compensation Act.

**EPP Specifications in Building Maintenance and Janitorial Contracts.** This spring SPB began inserting language into state building maintenance and janitorial bids and proposals calling for the use of certain "green" cleaning products in order to safeguard the health of custodial workers, building occupants, and the environment. Specifically, the specifications required that industrial and institutional general-purpose, bathroom, and glass cleaners meet the Green Seal Standard for Industrial and Institutional Cleaners (GS-37). According to Bill Covey, Recycling Coordinator for the State's Facilities Management Bureau and the person who administers the janitorial contracts for the Capitol Complex, there was some resistance from the janitorial contractors to the new requirements. However, he stated that the products are readily available in the Helena area at competitive prices. He is working with the contractors to educate them on the use of the "green" cleaners, which are usually citrus based, and generally take slightly longer to work than the customary petroleum based products. Therefore, training is an essential ingredient to obtaining success. For information on these specifications and advice on how to include them in your agency's bids and proposals, contact Jeanne Wolf at 444-7210 or [jwolf@state.mt.us](mailto:jwolf@state.mt.us).

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**Delegation Agreements.** Every two years we begin the cycle of revising agency procurement delegation agreements. Two particular issues to be addressed are: (1) how procurement is being handled by agency field offices, and (2) how the Montana Procurement Act applies to service contracts in agency programs. We will also be requiring agency purchasing officials to attend a "Procurement Update" course taught by Penny Moon. In addition, all Level One Delegation agencies will be required to post any bids or proposals they issue to the State's One-Stop Bid and Proposal website. Also, delegation dollar limits in the 2004-2005 delegation cycle will stay the same. If your agency has any special issues that you would like addressed in your delegation agreement, please e-mail them to Sheryl Olson at [sherylolson@state.mt.us](mailto:sherylolson@state.mt.us).

**Change to Automobile Liability Insurance Requirements.** The State Procurement Bureau (SPB) recently changed its insurance language regarding automobile liability based on agency input and research by Brett Dahl, the State's Risk Manager, showing that coverage is usually provided separately for personal injury and property damage. The new insurance language is posted on the SPB website at <http://www.discoveringmontana.com/doa/gsd/cs/Resources/Contract.asp> under Standard Contract Language. Please update your documents as necessary.

## ANNOUNCEMENT

**Big Sky Public Purchasing Association  
Marketing Exchange (Trade Show)  
Holiday Inn Trade Center (Raines Room)  
Billings, Montana  
Thursday, September 25, 2003  
1 to 5 p.m.**

The Marketing Exchange Show will be held in conjunction with the annual Big Sky Public Purchasing Association (BSPPA) conference.

For information regarding the marketing exchange and/or the BSPPA conference, please contact Nancy Voorhees, Montana State University-Billings Purchasing Department, at (406) 657-2151.

## PRINT AND MAIL SERVICES NEWS AND NOTES

Print and Mail Services continues to improve its "Print to Post" service by expanding its mail preparation facilities. The bureau currently works with several agencies on inserting materials into envelopes for mailing. As it explores more options in this area, it finds that more and more agencies are personalizing their mailings with information specific to the receiver.

Equipment is available to enable "smart" inserting. What this means is that bar codes are printed on the mailing piece along with all the other personalized information when documents are printed. The inserting machine reads the bar codes and only the information for that specific person is inserted into the envelope. This method also allows a variable number of attachments to be inserted based on specific information needed by the receiver.

Currently Print and Mail Services is researching equipment and software options to expand its inserting service. The process will allow the bureau to incorporate state-of-the-art file-based processing of materials seamlessly into the mail system.

If you would like more information on this process, please give Jim Ahern a call at 444-3053.

## SURPLUS PROPERTY NEWS AND NOTES

**New Auctioneering Firm.** The State's Surplus Property program recently entered into a contract with a new auctioneering firm, Gardner's Auction Services of Missoula, Kalispell, and Hamilton. Plans are currently underway for a two-day auction to be held this fall.



## FACILITIES MANAGEMENT NEWS AND NOTES

### **Emergency Management Planner Hired.**

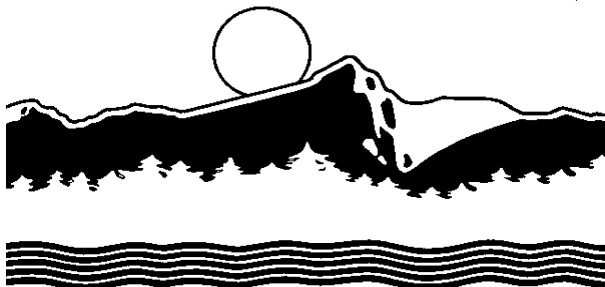
The Facilities Management Bureau (FMB) has hired Louis Antonick as the new emergency management planner for the Capitol Complex. Lou looks forward to working with agencies on emergency planning issues.

**Storage Space Available.** The FMB has Helena storage space available at the Old Liquor Warehouse located at 920 Front Street. The storage is located in the basement of the building, but is accessible by elevator and loading docks. If any agency is interested, please contact the FMB at 444-3060.

**Custodial Services Budget Cuts.** Cuts were made during the last legislative session that affect the custodial services in Helena area office space. Until further notice, exterior and interior window washing has been suspended in the state office buildings monitored by General Services Division.

### **Recycle Montana Program Update.**

Corrugated cardboard prices have been fluctuating over the past few months. Therefore, the recycle mills have gotten very particular about the product they will accept. Currently, the mills will only accept CORRUGATED CARDBOARD. Boxes made of pressed paper are not acceptable. Examples of pressed paper are boxes in which envelopes come in, shoeboxes or soft drink boxes. Please alert your staff that only corrugated paper can be recycled. Therefore, the pressed paper should be discarded and not placed in the recycle containers.



## PURCHASING CARD

**Protect That Information!** Recent national news headlines report clever attempts to defraud credit card holders via the Internet, wherein official looking e-mails with the subject "Fraud Alert" are alerting cardholders that "someone is fraudulently using your credit card to make a purchase." Unsuspecting cardholders are asked to give their credit card number and social security number over the Internet for verification purposes. While these ploys have not been targeted directly at our state purchasing card accounts, it is a good idea to be very cautious if approached in such a fashion and to inform your agency purchasing card contact or the State Procurement Bureau immediately. Under no circumstances should account number or personal social security number information be provided to anyone other than your agency purchasing card contact or appropriate State Procurement Bureau personnel, and always verify the source of requests for personal data. For more information, please contact Tom Gustin at 444-3312, e-mail [tgustin@state.mt.us](mailto:tgustin@state.mt.us).



## THINK ABOUT IT

*"Ability is what you're capable of doing. Motivation determines what you do. Attitude determines how well you do it."*

**--Lou Holtz**

## QUESTION OF THE QUARTER

***If we get a federal grant that earmarks the grant money for subcontracts to specific companies or non-profit agencies, and each subcontract is \$15,000 or less, can we treat it as a "sole source" procurement?***

Your agency can comply with the terms of the grant on the following basis. First, according to section 18-4-132(1), MCA, the Montana Procurement Act does not apply to "grants or contracts between the state and ... other governments." A "grant" is defined in section 18-4-123(11), MCA, to mean "the furnishing by the federal government of assistance, whether financial or otherwise, to a person or agency to support a program authorized by law."

Second, section 18-4-132(1), MCA, goes on to say that the Montana Procurement Act or its rules "do not prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, bequest, or cooperative agreement."

Therefore, in the end, regardless of dollar amount, if the grant specifies whom you must subcontract with, you are exempted from the Montana Procurement Act.

## PUBLIC VEHICLE FUELING

**Savings abound.** A friendly reminder for cost-conscious agency drivers--recent articles mentioned a two-cent-per-gallon savings at Town Pump stations and Holiday StationStores for agencies that use the State's Wright Express (WEX) card. Holiday's discount is reflected in the net price per gallon on the monthly WEX vehicle analysis report while Town Pump's rebate will appear in the form of a line-item credit applied to the monthly invoice/statement in the month following. For those drivers traveling in extreme eastern Montana, the Farmers Union Oil/Cenex station in Baker, Montana, offers State WEX drivers a five-cent-per-gallon discount.

Holiday StationStores recently added the convenience of WEX card acceptance at their

pay-at-the-pump locations. Agencies now have the option of authorizing and processing the transaction at the fuel island instead of having to go through the check-out line inside each station. Flying-J stations began accepting the WEX card earlier this year, but like Tesoro stations and most--but not all--unbranded independent fuel merchants, Flying-J does not participate in WEX's tax exemption program, and agencies fueling there will not enjoy the 18.4 cent per gallon Federal Excise Tax exemption on gasoline products.

If you have any questions about discounts, exemptions or any fueling or energy related issues, please contact Tom Gustin at 444-3312, e-mail [tgustin@state.mt.us](mailto:tgustin@state.mt.us)

## ON THE LEGAL FRONT

Two procurement cases were resolved in the last few months. In May of 1999, SPB rejected a late proposal. A protest was filed and a contested case hearing requested. The State won the contested case hearing, but the case was appealed to district court. Several months later, in March 2003, the plaintiff decided to drop the appeal.

A second case, also resolved in May 2003, concerned the State's right to issue "as needed, if needed" contracts. A protest was filed and a contested case hearing was requested. However, before the hearing was held, the matter was settled between the parties. A third case involving MSU and its right to find an offeror non-responsive is awaiting a hearings officer decision following a February 2003 contested case hearing.

## PURCHASING USERS GROUP

The Fall meeting of the Purchasing Users Group will be Thursday, November 6, 2003, from 1 p.m. to 4 p.m. in the Public Health and Human Services Auditorium, 111 North Sanders in Helena.

## ABOUT THIS NEWSLETTER

"GSD Update" is published quarterly by the General Services Division of the Montana Department of Administration. For more information, or to get on the mailing list, contact us at (406) 444-2575. Our address is: P.O. Box 200135, Helena, MT 59620-0135. Fax number: (406) 444-2529. Website address: [www.discoveringmontana.com/doa/gsd](http://www.discoveringmontana.com/doa/gsd).